

Explanatory Statement

Civil Aviation Safety Regulations 1998

Part 61 Manual of Standards Amendment Instrument 2018 (No. 1)

Purpose

The purpose of the *Part 61 Manual of Standards Amendment Instrument 2018 (No. 1)* (the **MOS amendment**) is to modify the standards for certain flight tests and proficiency checks in Schedules 5 and 6, respectively, of the Part 61 Manual of Standards (the **MOS**), and to make complementary changes to sections 12 and 13 which are the machinery provisions governing how the Schedules operate.

While the standards are essentially the same as before, they have been prescribed in a different, more user-friendly format. Flight examiners conducting the tests and checks are also provided with a greater degree of flexibility in selecting particular test or check elements for the purposes of assessing whether appropriate standards have been met by an applicant. For the purposes of the amendment, references to a “flight examiner” are taken to include CASA and relevant regulation 61.040 approval holders when they carry out flight tests or proficiency checks.

Legislation — the Act

Under subsection 98 (1) of the *Civil Aviation Act 1988* (the **Act**), the Governor-General may, among other things, make regulations prescribing matters required, permitted, necessary or convenient for the Act and in the interests of the safety of air navigation.

Legislation — Part 61 of CASR

Some of these regulations are contained in the *Civil Aviation Safety Regulations 1998* (**CASR 1998**). Part 61 of CASR 1998 deals with flight crew licensing, including flight tests and proficiency checks.

A fundamental rationale behind Part 61 of CASR 1998 is that a pilot may be authorised to fly a particular type of aircraft, for a particular kind of operation, only if he or she has undertaken sufficient training and an assessment has been made (through a flight test) to confirm that the pilot is competent in operating that type of aircraft for the particular kind of operation in question. In addition, a pilot must periodically undergo a review (a proficiency check) of their continued competence operating the aircraft if the pilot wishes to continue flying that type of aircraft in that kind of operation.

Legislation — Manual of Standards

Under paragraph 98 (5A) (a) of the Act, the regulations may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft. By virtue of this power, regulation 61.035 of CASR 1998 provides for the issue of a Manual of Standards for Part 61. Under subregulation 61.035 (1), for paragraph 98 (5A) (a) of the Act, CASA has issued a MOS that sets out matters relating to flight crew licences. Schedule 5 of the MOS concerns flight test standards. Schedule 6 concerns proficiency checks.

Background

Schedules 5 and 6 of the MOS contain the flight test and proficiency check standards for, or relevant to, CASR Part 61 licences, ratings and endorsements. CASA has been monitoring the use of the standards since they were first introduced in September 2014 with a view to updating the standards and the Flight Examiner Handbook (the **FEH**).

In the course of this exercise, CASA formed the view that a better method of prescribing the standards in the MOS could be achieved.

Prior to the MOS amendment, the flight test and proficiency check standards relied on the practical flight standards contained in *Schedule 2 – Competency Standards*, of the MOS. Thus, a flight test or proficiency check standard was broadly the same as the flight training standard for a particular unit, element and performance criterion. Although many of the test standards in Schedule 5 and the check standards in Schedule 6 had modifications to the Schedule 2 standard, for example, limiting the scope of the range of variables or removing elements or performance criteria, there was overall equivalence with Schedule 2. Thus, if no modifications were prescribed, the test or check standard was all of the content of a Schedule 2 unit according to the applicable range of variables.

In the light of experience, CASA now considers that this approach is too inflexible for flight examiners conducting tests and checks, because the circumstances may in practice call for flexibility. For example, sometimes aircraft equipment, operational practice or flight location cause difficulties in applying the standards.

It was also realised that, in various instances, a number of different test or check items addressed a common activity or manoeuvre using different language. For example, test items for planning, briefing, and conducting take-off and departure procedures for some tests were expressed in different ways but were all essentially targeting the same matter of competency.

Under the MOS amendment, instead of applying all of the relevant Schedule 2 practical standards to a flight test (modified as required by the old Schedule 5), there will be separate and standalone flight test standards contained in the new Schedule 5. For greater ease of use, the descriptions of the standards align with the items of the flight test form rather than the style used in Schedule 2. The same will be the case for proficiency checks under Schedule 6.

Each flight test standard in Schedule 5 includes the following sections, and a very similar approach has been adopted in Schedule 6 for proficiency checks:

1. ***Flight test requirements*** — statements that generally describe what the applicant must demonstrate to pass the test.
2. ***Knowledge requirements*** — topics of knowledge that are assessed during the ground component stage of the test.
3. ***Activities and manoeuvres*** — test items grouped as elements which form the structure and content of the flight component of the test.
4. ***Operational scope and conditions*** — this section of the proposed new MOS standard provides, in plain language, statements about how the test is to be conducted.

The effect is that, for both flight tests and proficiency checks, by prescribing the standards in the proposed format, the MOS amendment ensures a high degree of synchronicity and consistency between elements of the overall standards system, in particular the FEH, the relevant Forms, and the CASA online flight test management system.

MOS amendment

Schedule 5 — flight tests

Section 12 is a key machinery provision for the new Schedule 5 flight test requirements. Only subsections 12.1, and 12.4 to 12.7, are new.

Under new subsection 12.1, in the section, references to a “flight examiner” are taken to include CASA and the holder of a relevant approval under regulation 61.040, when the test is conducted by CASA or such an approval holder.

Under subsection 12.2, the competency standards for a flight test are as set out in the Appendix in Schedule 5 that is for the particular test. The Table of Contents at the front of Schedule 5 guides the reader to any particular flight test.

Under subsection 12.3, the competency standards for a flight test comprise the Schedule 5 flight test requirements, knowledge requirements, and activities and manoeuvres to be tested (subject to any expressed operational limitations or tolerances).

Under new subsection 12.4, the flight examiner must determine if an applicant has demonstrated the required competency in the Schedule 5 activities and manoeuvres for the test.

Under new subsection 12.5, for each of those relevant activities and manoeuvres listed in Schedule 5, the required competency must be demonstrated by reference to the flight examiner’s representative sample of competency standards.

Under new subsection 12.6, the representative sample of competencies must be chosen from relevant units of competency in Schedule 2.

Under new subsection 12.7, the Schedule 2 competency standards from which the representative sample is drawn are identified in the opening Note accompanying each relevant activity or manoeuvre mentioned in Schedule 5. These Notes refer to the unit codes of the relevant units of competency in Schedule 2.

Guidance in compiling a relevant representative sample of Schedule 2 competencies is provided in the FEH. Under existing section 4 of the MOS, it is a condition on a flight examiner rating that the holder must comply with the requirements of, and take into account the recommendations in, the FEH as in force and published on the CASA website at the time of the flight test or proficiency check. This is, in effect, a “from time to time” incorporation of a non-legislative document, and is permitted under subsection 98 (5D) of the Act. (See also below under “Compliance with the Flight Examiner Handbook”.)

Schedule 6 — proficiency checks

The provisions in section 13 mirror, specifically for proficiency checks, the same approach and methodology as is described above for flight tests.

Compliance with the Flight Examiner Handbook

Under subregulation 11.068 (1) of CASR 1998, for subsection 98 (5A) of the Act, CASA may issue a legislative instrument (like a MOS) that imposes a condition on a specified class of authorisations (including, by virtue of the definition of

“authorisation” in regulation 11.015, flight crew licences, ratings or endorsements, and approvals under regulation 61.040 to conduct a proficiency check).

Under subregulation 11.068 (2), the class of authorisations may include authorisations granted *before* the imposition of the condition. Under subregulation 11.068 (3), a condition imposed by a legislative instrument issued under subregulation 11.068 (1) is taken to be a condition of *every* authorisation of the class mentioned in the instrument. Under subregulation 11.068 (4), the obligation to comply with the condition is, in effect, prospective only from the commencement of the MOS amendment.

Under section 14 of the *Legislation Act 2003* (the *LA*), such a legislative instrument may apply, adopt or incorporate (*incorporation*) the provisions of another disallowable legislative instrument as in force from time to time, or incorporate the provisions of any other instrument (that is, in effect, a non-legislative instrument) only as it exists at the time the incorporation takes effect (that is, not as later amended).

However, under subsection 98 (5D) of the Act, despite section 14 of the LA, a legislative instrument made under the Act may incorporate the provisions of any other instrument (that is, in effect, a non-legislative instrument) as it exists from time to time.

Using these heads of power, when it was first made in 2014, the MOS instrument, both as a MOS empowered to provide for matters “relating to” flight crew licences, and as a legislative instrument in its own right for the purposes of subregulation 11.068 (1) of CASR 1998, was used as the convenient, accessible and relevant vehicle to contain and impose a condition on flight examiner ratings that the holder of the rating, when conducting flight tests or proficiency checks, must comply with CASA’s FEH as in force and published on the CASA website at the time of the flight test or proficiency check.

CASA considers that the obligation to conform to the FEH should also apply more formally to holders of approvals under regulation 61.040 to conduct a flight test or a proficiency check. This requirement has been the case already, either as a matter of practice, or as a condition on individual approvals, but the amended section 4 now makes the requirement a formal one under the MOS. As noted above, the FEH is freely available on the CASA website.

Legislation Act 2003

As mentioned above, under paragraph 98 (5A) (a) of the Act, regulations made for that provision may empower CASA to issue instruments in relation to matters affecting the safe navigation and operation of aircraft. Under subsection 98 (5AA) of the Act, an instrument issued under paragraph 98 (5A) (a) is a legislative instrument if expressed to apply in relation to a class of persons, aircraft or aeronautical products.

The various standards set by the MOS, and the MOS amendment, apply, not to a particular person or a particular aircraft or aeronautical product but to classes of persons and aircraft and, therefore, the MOS amendment is a legislative instrument subject to registration, and tabling and disallowance in the Parliament, under sections 15G, and 38 and 42 of the LA.

Acts Interpretation Act 1901

Under subsection 33 (3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative

character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Consultation

CASA published a consultation draft of the MOS amendment on the CASA website for public comment during the period 5 September to 3 October 2017. Eight submissions were made to CASA suggesting some modifications to some of the requirements in Schedules 5 and 6. CASA considered all comments received and took them into account in preparing the final version of the MOS amendment.

Office of Best Practice Regulation (OBPR)

Part 61 under which the MOS amendment is made, was made by the *Civil Aviation Legislation Amendment Regulation 2013 (No. 1)*, as amended by the *Civil Aviation Legislation Amendment (Flight Crew Licensing Suite) Regulation 2013*, and the *Civil Aviation Legislation Amendment (Flight Crew Licensing and Other Matters) Regulation 2013*.

A Regulation Impact Statement (*RIS*) was prepared by CASA for these regulations under which the MOS is made. This RIS was assessed as adequate by OBPR (OBPR id: 2777). It continues to apply for the purposes of the MOS amendment because the requirements under the MOS are essentially recast for greater clarity and effectiveness, rather than changed in any substantive way. In any event, OBPR has made an assessment that a RIS is not required for the MOS amendment (OBPR id: 22720).

Statement of Compatibility with Human Rights

The Statement in Appendix 1 is prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The legislative instrument does not directly engage any of the applicable rights or freedoms, and is compatible with human rights, as it does not directly raise any human rights issues.

Commencement and making

The MOS amendment commences on the day it is registered.

The MOS amendment has been made by the Director of Aviation Safety, on behalf of CASA, in accordance with subsection 73 (2) of the Act.

Statement of Compatibility with Human Rights

*Prepared in accordance with Part 3 of the
Human Rights (Parliamentary Scrutiny) Act 2011*

Civil Aviation Safety Regulations 1998

Part 61 Manual of Standards Amendment Instrument 2018 (No. 1)

This *Part 61 Manual of Standards Amendment Instrument 2018 (No. 1)* (the **MOS amendment**) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of the MOS amendment is to modify the standards for certain flight tests and proficiency checks in Schedules 5 and 6, respectively, of the Part 61 Manual of Standards, and to make complementary changes to sections 12 and 13 which are the machinery provisions governing how the Schedules operate.

While the standards are essentially the same as before, they have been prescribed in a different, more user-friendly format. Flight examiners conducting the tests or checks are also provided with a greater degree of flexibility in selecting particular test elements for the purposes of assessing whether appropriate standards have been met by an applicant.

Human rights implications

The MOS amendment is a legislative instrument that is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The instrument does not engage any of the applicable rights or freedoms.

Conclusion

The MOS amendment is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Civil Aviation Safety Authority